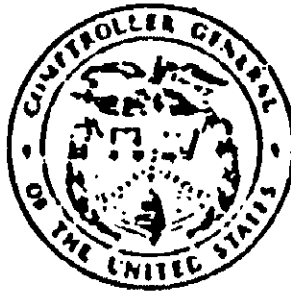


DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

119471

B-203379, B-203379.2

FILE:

DATE: September 20, 1982

MATTER OF: Republic Steel Corporation; Centex
Construction Company, Inc.

DIGEST:

1. GAO will not consider a protest of a solicitation provision where the protester no longer objects to the use of the provision in the protested solicitation because it has received a subcontract from the awardee and where the provision had no effect on award of the contract, even though the protester still objects to the provision in general, since the protest is rendered hypothetical and GAO does not decide hypothetical questions.
2. Agency's decision to permit correction of a mistake in bid was not unreasonable where the worksheets provide clear and convincing evidence of both the mistake and intended bid and no other bidder is displaced.

Centex Construction Company, Inc. (Centex), protests the Army Corps of Engineers, Engineer District, Huntsville, Alabama (Corps), decision to correct a mistake in the bid of the awardee, Castle Construction Company (Castle), under invitation for bids No. DACA87-91-B-0080. In addition, Republic Steel Corporation (Republic) protests the inclusion of a patent royalty provision in the same solicitation.

We dismiss Republic's protest and deny Centex's protest.

Concerning Republic's protest, when Castle was awarded the contract, Republic received a subcontract from Castle. Consequently, Republic withdrew its objection concerning this specific solicitation, but stated that it still objected to the provision. As Republic recognized, the provision had no effect on the award of this contract. That fact and the withdrawal of its objection with regard to this solicitation render the question hypothetical. As a matter of policy, we do not decide hypothetical questions. Therefore, we dismiss Republic's protest. See, e.g. Martin Marietta Corporation, B-204785, May 5, 1982, 82-1 CPD 423.

The contract involves constructing 30 concrete and steel "igloos" for the storage of ammunition and ammunition manufacturing materials. The contract includes site preparation, landscaping, fencing and other similar adjuncts to the igloo construction. The solicitation bidding schedule required prices to be submitted for item 1, excavation and replacement of excess unsatisfactory material, and item 2, all other work, and for the total of the two items. Award was to be made to the bidder with the lowest total bid price. When bids were opened, Castle's bid was low at \$9,100,300; Centex's bid was second low at \$11,337,000. After bid opening, but before award, Castle notified the Corps that it had made clerical errors in its bid and requested correction of its bid price.

According to Castle, the error occurred in the following manner. Several days prior to bid opening, Castle prepared a tentative bid price which included several prices which were subject to change as subcontractor and supplier price quotations were received. One estimator was responsible for preparing the estimate for "Division 2, Sitework." That estimator received price quotations from a number of subcontractors. The two low subcontractor quotations were received on the same day from "Thompson" and "Edwards," and were listed on the "Sitework Analysis Sheet." That sheet essentially is a grid consisting of the subitems that make up the sitework on the left side of the sheet and the various subcontractors across the top of the sheet. Price quotations for each subitem are then placed in the appropriate subcontractor column across from the appropriate subitem. Subcontractor columns are then totaled to get a total subcontractor price for all of the work involved.

Castle states that the estimator received quotations from the two subcontractors for some, but not all, subitems. Both included and omitted the same subitems, so their bids were directly comparable. Those partial quotations were listed on the sheet in the appropriate subcontractor column opposite the appropriate subitem and then the columns were totaled to provide a comparison. Thompson's total was \$1,530,356; Edwards' was \$1,673,928. Since neither company had offered all the subitems, the estimator continued to receive quotations for the omitted subitems. The lowest quotations and subitems were listed separately at the bottom left portion of the sitework analysis sheet. Those subitems and prices were: topsoil (\$71,533), grassing (\$62,478), riprap and sand bedding

(\$65,700), storm drains (\$102,701), foundation drains (\$59,596), French drains (\$7,351) and drain concrete (\$1,800). The total amount is \$371,209.

The estimator then placed those prices in the line opposite the appropriate subitem name in the column for Thompson's quotations, since it was the lowest received for the other subitems. At that point, the \$1,530,356 total at the bottom of Thompson's quotations column should have been increased by the additional \$371,209 to reach the proper amount for all of the subitems. The estimator inadvertently neglected to do so, however. The sitework estimator then quoted the \$1,530,356 figure to the chief estimator as the total amount for all Division 2 sitework. This erroneous amount was used to prepare the bid.

Castle asked that its bid be corrected upward in the amount of \$371,209 for the missing subitems, plus \$4,455 for subcontractor performance and payment bonds and \$38,693 for overhead and profit, for a total of \$414,357. The bond and overhead/profit figures were based on formulas used in the preparation of the remainder of its bid.

In support of its request, Castle submitted sworn statements of the principal participants concerning the occurrence of the mistake and the original worksheets and subcontractor quotations.

The Corps reviewed the documentation and found that there was clear and convincing evidence of the mistake and the intended bid from the worksheets and that the correction would not change the ranking of bids. Consequently, the Corps permitted correction in the requested amount and awarded to Castle on that basis.

Centex requested the supporting documents from the Corps, but was denied them on the grounds that they contained proprietary information. However, our Office reviewed all relevant information regarding the protest. Based on admittedly limited information, Centex argues Castle did not show by clear and convincing evidence that it intended to include the omitted subitem quotations in its bid. Consequently, it could not show its intended bid price and should not have been permitted to correct.

Correction of an error in bid prior to award will be permitted when the bidder has submitted clear and convincing evidence that an error has been made, the manner in which

the error occurred, and the intended bid price. Defense Acquisition Regulation (DAR) § 2-406-3 (1976 ed.); Trenton Industries, B-188001, March 31, 1977, 77-1 CPD 223. Although our Office retains the right to review administrative determinations, the authority to correct mistakes alleged after bid opening, but prior to award is vested in the procuring agency and we will not disturb an agency's determination concerning correction unless there is no reasonable basis for such determination. John Amentas Decorators, Inc., B-190691, April 17, 1978, 78-1 CPD 294.

Where, as here, correction would not displace a lower bidder, the existence of the error and the bid actually intended may be established from the bid, the bidder's worksheets and other evidence submitted. See DAR § 2-406(a)(3). Our Office has found worksheets in themselves to be clear and convincing evidence if they are in good order and indicate the intended bid price, so long as there is no contravening evidence. Trenton Industries, *supra*.

Our review of the worksheets and other documents supports the Corps finding that there is clear and convincing evidence of both the mistake and how it was made and the intended bid. The sitework analysis sheet and the original subcontractor quotations show that Thompson's quotation omitted the subitems in question here, and that the total price of its quotation did not include them. The sitework analysis sheet also shows that the omitted subitem quotations were in fact intended to be used in the preparation of the bid, since they were transposed to the Thompson column. The total of that column, even though it does not include the transposed subitem prices, was then used in the preparation of the bid. This figure can be traced through the various stages of bid preparation as shown on other worksheets. It is clear that the omitted subcontractor quotations were intended to be in that total price, since they were physically placed in the column, but were erroneously not added to the total. Finally, the worksheets establish the formulas used for the bond and profit/overhead figures. All worksheets appear to be in good order and to be untampered with.

Consequently, we find that the Corps had a reasonable basis to permit correction.

Harry W. Linn, Jr.
Comptroller General
of the United States